

Remarks/Arguments:

With the present response, claims 1-32 are pending. The Examiner is thanked for the indication that claims 23-28 are allowed. New claim 32 has been added. Claim 32, which depends from claim 1, recites a limitation of claim 29, which is addressed *infra*.

The Examiner is also thanked for the courtesy of the telephone interview conducted on December 3, 2007. During the interview, the interpretations of the word "implant" and "implanting" as used in claims 1 and 22, respectively, and the word "round" as used in claim 31 were discussed. Also, the Examiner informed the undersigned that the Terminal Disclaimer filed on August 22, 2007 was disapproved because the signatory of the Terminal Disclaimer was not listed on the Declaration and Power of Attorney filed with the application.

Terminal Disclaimer

Applicants herewith are filing a Terminal Disclaimer signed by Joshua L. Cohen, whose name is listed on the Declaration and Power of Attorney originally filed with the present application. Applicants respectfully request consideration and approval of the presently filed Terminal Disclaimer.

Claim rejections

Claim rejections under 35 U.S.C. §112

Claim 30 stand rejected under 35 U.S.C. 112, second paragraph as being indefinite. Claim 30 has been amended to provide proper antecedent basis for "the endoluminal implant." Applicants respectfully request withdrawal of the rejection.

Claim rejections under 35 U.S.C. §102

Claims 1-16, 22, and 31 stand rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,769,830 to Parker ("Parker").

In order to anticipate a claim under 35 U.S.C. §102, the reference must teach every element of the claim. M.P.E.P. §2131. Furthermore, "the identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989) and M.P.E.P. §2131.

Amended claim 1 recites, *inter alia*, an *endoluminal implant* comprising a plurality of continuous filaments braided together, at least one filament comprising at least one first region having a first cross-sectional area and at least one second region having a second cross-

sectional area, wherein the first cross-sectional area is larger than the second cross-sectional area.

The word "implant" has a specific meaning as used in the present application, which is allowable. See MPEP §608.01(o). Further, "[t]he words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004). MPEP §2111.01. The Office Action interprets the meaning of the word "implant" to include the device disclosed by Parker. Applicants respectfully submit that such meaning is inconsistent with the specification. The specification clearly discloses that a prosthesis is implanted in a blood vessel by delivering the prosthesis through an introducer. Application specification, page 25, lines 16-20. This introducer is similar to the introducer disclosed by Parker. After the prosthesis had been delivered to its deployment location, the introducer is withdrawn. It is the prosthesis that has been implanted, not the introducer.

Further, the Office Action alleges that the word "implant" has been given its broadest reasonable interpretation, with a definition that includes "something inserted during surgery" (ENCARTA World English Dictionary)." Office Action, page 9, lines 10-12. Applicants respectfully disagree with the Examiner's interpretation of the word "implant."

The full definition of the word "implant" from ENCARTA World English Dictionary is:

im·plant [im plánt]

verb (*past and past participle* im·plant·ed, *present participle* im·plant·ing, *3rd person present singular* im·plants)

Definition:

1. *transitive verb* **establish habits or notions:** to fix something deeply in somebody's mind or consciousness as a behavior pattern, thought, or belief
2. *transitive verb* **insert something:** to fit or set something small into something larger, which then encases it
 - *Gold fillings, implanted in his front teeth, flashed when he smiled.*
3. *transitive verb* **bury something in ground:** to put something in the ground, especially so that it grows
4. *transitive verb* **SURGERY embed something in body:** to embed something such as a

- mechanical device in the body
- *The hormone pellets are invisibly implanted just below the skin.*

5. intransitive verb MEDICINE become embedded in womb: to become embedded in the lining of the womb (*refers to embryos*)

noun (*plural* im-plants)

Definition:

SURGERY something inserted during surgery: something inserted or embedded in the tissues or organs of the body during a surgical procedure, e.g. encapsulated drugs or fluid-filled sacs to replace or augment breast tissue

A copy of the definition from the ENCARTA World English Dictionary is attached hereto.

Applicants respectfully submit that an implant (used here as a noun), as exemplified by the recitation of "encapsulated drugs or fluid-filled sacs" in the above definition, is something that remains with the body after an implantation procedure. While Applicants submit that an implant is not necessarily permanent, an implant, however, remains within the body at the end of the implantation procedure. The catheter disclosed by Parker, on the other hand, is a tool used to implant another device, such as a balloon catheter, and then the catheter is removed after such implantation is complete.

To the extent that the Office Action asserts that some types of catheters are meant for implantation in the human body for extensive periods of time, nothing in the Parker specification indicates that the Parker catheter is such a type of catheter. The Federal Circuit recognizes that different types of catheters can be distinguished from one another. *See Rowe v. Dror*, 42 USPQ2d 1550 (Fed. Cir. 1997) (claim limitation reciting a balloon angioplasty catheter not anticipated by a general purpose balloon catheter). Accordingly, it is improper to read into the Parker disclosure properties of catheters that are not the type of catheter specifically disclosed by Parker.

Because Applicants' claimed implant differs from the introducer catheter disclosed by Parker, Applicants respectfully submit that the rejection of claim 1 is improper. Applicants respectfully request reconsideration and allowance of claim 1. Claims 2-16 all ultimately depend from claim 1, and are allowable over Parker for at least the reasons set forth above with respect to claim 1. Reconsideration and allowance of claims 2-16 is respectfully requested.

Claim 22 recites, *inter alia*, a method for treating a human being, the method comprising the step of *implanting* within a lumen of the human being an endoluminal device comprising a plurality of continuous filaments braided together, at least one filament comprising at least one first region having a first cross-sectional area and at least one second region having a second cross-sectional area, wherein the first cross-sectional area is larger than the second cross-sectional area.

The ENCARTA definition of the word "implant" when used as a verb, can mean "embed something in body." ENCARTA definition, *supra*. Applicants respectfully submit that Parker's insertion catheter, while *inserted* into a blood vessel, is not *embedded* according to the ENCARTA definition that the Office Action relies upon with respect to claim 1.

Because Parker fails to disclose or suggest the claimed limitation of implanting an endoluminal device, as recited in claim 22, Applicants respectfully submit that claim 22 is patentable over Parker. Reconsideration and allowance of claim 22 is respectfully requested.

Amended claim 31 recites, *inter alia*, an endoluminal device comprising a plurality of continuous filaments braided together, at least one filament comprising at least one first region having a *circular* first cross-section with a first diameter and at least one second region having a *circular* second cross-section with a second diameter, wherein the first cross-section is larger than the second cross-section.

Parker discloses a wire braid 26 that is ground down while forming tapered distal end 17. The ground portion of wire braid 26 is not circular, but is flattened due to the grinding. Parker therefore fails to disclose or suggest the claimed limitation of the at least one second region having a *circular* second cross-section. Because Parker fails to disclose or suggest all of the limitations of claim 31, Applicants respectfully submit that claim 31 is patentable over Parker. Reconsideration and allowance of claim 31 is respectfully requested.

Claim rejections under 35 U.S.C. §103

Claim 17 stands rejected under 35 U.S.C. 103(a) as unpatentable over Parker in view of U.S. Patent No. 5,019,057 to Truckai ("Truckai"). Applicants respectfully traverse this rejection. As claim 17 depends from claim 1, and Truckai also fails to teach or suggest an implant having the claimed features of Applicants' invention, Applicants submit that claim 17 is patentable over

the proposed combination of Parker and Truckai for at least the same reasons as set forth above with respect to claim 1. Reconsideration and allowance of claim 17 is respectfully requested.

Claims 18-20 and 29 stand rejected under 35 U.S.C. 103(a) as unpatentable over Parker. Applicants respectfully traverse this rejection. Claims 18-20 ultimately depend from claim 1, and Applicants submit that claims 18-20 are patentable over Parker for at least the same reasons as set forth above with respect to claim 1. Reconsideration and allowance of claims 18-20 is respectfully requested.

Claim 29 recites, *inter alia*, an endoluminal device comprising a plurality of continuous filaments braided together, at least one filament comprising at least one first region having a first cross-sectional area and at least one second region having a second cross-sectional area, wherein the first cross-sectional area is larger than the second cross-sectional area, *wherein the endoluminal device comprises a radially compressed configuration for introduction into a lumen and a radially expanded configuration for implantation within the lumen.*

The Office Action alleges that Parker discloses a radially expandable balloon catheter and concludes that it would have been obvious to one having ordinary skill in the art at the time of the invention to include a balloon catheter with the endoluminal device of Parker. Office Action, page 5, lines 16-20. While Applicants agree that Parker's guiding catheter may be used with a balloon catheter, Applicants respectfully submit that there is no teaching or suggestion in Parker to provide his guiding catheter with *a radially compressed configuration for introduction into a lumen and a radially expanded configuration for implantation within the lumen*, as is recited in claim 29. To the contrary, such a configuration would frustrate the purpose of the guiding catheter, which is to provide access for the balloon catheter to be inserted into a body lumen.

Further, Parker discloses a compression resistant outer layer 27. Col. 3, line 51. Such a compression resistant outer layer would frustrate Parker's catheter having a radially compressed configuration for introduction into the lumen, as was suggested by the Office Action.

Based at least on the above arguments, Applicants respectfully submit that the rejection of claim 29 is improper. Applicants respectfully request reconsideration and allowance of claim 29.

Claim 30 stands rejected under 35 U.S.C. 103(a) as unpatentable over Parker in view of U.S. Patent No. 4,886,062 to Wiktor ("Wiktor"). Applicants respectfully traverse this rejection. As claim 30 depends from claim 1, and Wiktor also fails to teach or suggest an implant having the claimed features of Applicants' invention, Applicants submit that claim 30 is patentable over

the proposed combination of Parker and Wiktor for at least the same reasons as set forth above with respect to claim 1. Reconsideration and allowance of claim 30 is respectfully requested.

Double Patenting rejections

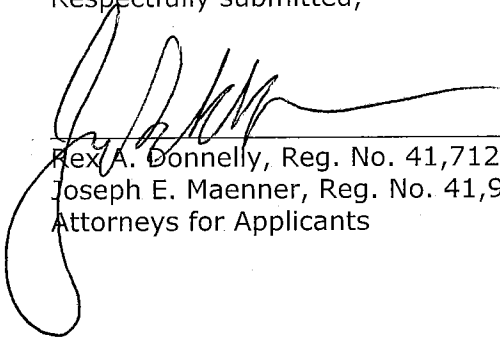
Claims 1, 5, 6, 9, and 22 stand rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1, 2, 6, 10, and 22 of U.S. Patent No. 6,325,822. Claims 21 and 22 stand rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 2 and 19 of U.S. Patent No. 6,685,738.

Applicants herewith submit new Terminal Disclaimers to overcome these rejections. Reconsideration and allowance of claims 1, 5, 6, 9, 21, and 22 is respectfully requested.

Conclusion

In light of the above amendments, arguments, and terminal disclaimers, Applicants hereby submit that the present application is in condition for allowance. Prompt reconsideration and allowance is respectfully requested.

Respectfully submitted,



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RAD/JEM/
Encls.: Terminal Disclaimer (2)
MSN Encarta definition of term "Implant"

Dated: March 19, 2008

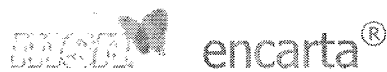
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implicate

implication

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implicit contract



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noun (*plural* im-plants)

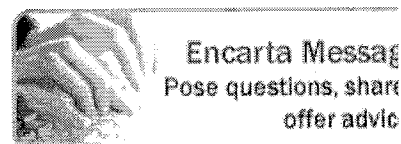
Definition:

SURGERY **something inserted during surgery:** something inserted or embedded in the tissues or organs of the body during a surgical procedure, e.g. encapsulated drugs or fluid-filled sacs to replace or augment breast tissue

- **im-plant-a-ble** *adjective*
- **im-plant-er** *noun*

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